

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NAAMAN WASHINGTON,

Plaintiff,

v.

JERRY CLARK et al.,

Defendants.

CASE NO. C14-192 MJP

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DISMISSING CASE

THIS MATTER comes before the Court on Plaintiff's Objections (Dkt. No. 10) to Magistrate Judge Tsuchida's Report and Recommendation (Dkt. No. 8) on Plaintiff's proposed Complaint and IFP application (Dkt. Nos. 7, 1.) Plaintiff also filed an Amended Complaint despite failing to obtain leave to do so. (Dkt. No. 18.) Having reviewed the Objections, the R&R, the proposed Complaint, the Amended Complaint, and all related papers, the Court hereby ADOPTS the R&R in full and DISMISSES the case without prejudice.

**Background**

Plaintiff Naaman J. Washington's proposed complaint includes Fourth Amendment, due process, and equal protection claims under 42 U.S.C. § 1983 against several participants in the

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1 events leading up to his arrest and conviction on counts of unlawful possession of a controlled  
 2 substance with intent to deliver, unlawful possession of a controlled substance, and unlawful  
 3 possession of a firearm in the first degree. (See Proposed Compl, Dkt. No. 1, Ex. 1.) See also  
 4 Washington Online case summary at  
 5 [https://linxonline.co.pierce.wa.us/linxweb/Case/CriminalCase.cfm?cause\\_num=11-1-02132-9](https://linxonline.co.pierce.wa.us/linxweb/Case/CriminalCase.cfm?cause_num=11-1-02132-9).  
 6 Both the controlled substance and the firearms were allegedly discovered in Plaintiff's car after  
 7 Plaintiff was pulled over for driving with a suspended license. (Dkt. No. 1, Ex. 1 at 7–13.) The  
 8 defendants named by Plaintiff include the Washington State trooper who stopped Plaintiff's car;  
 9 the tow truck driver who impounded Plaintiff's car after he was arrested; and the tow truck  
 10 company that employed the driver. (Id.)

11 Judge Tsuchida's Report and Recommendation focuses on the fact that a finding  
 12 favorable to Plaintiff in this § 1983 action would have the effect of rendering his conviction  
 13 invalid. (Dkt. No. 8 at 3.) Under Heck v. Humphrey, 512 U.S. 477 (1994), this effect triggers an  
 14 exhaustion requirement: the plaintiff must prove that the conviction has already been invalidated  
 15 before his § 1983 claim can proceed. (See id.) In his Objections, Plaintiff asserts Judge Tsuchida  
 16 failed to demonstrate that a favorable finding would have such an effect. (Dkt. No. 10 at 5–6.)

### 17 Analysis

18 In the Ninth Circuit, Heck v. Humphrey applies to Fourth Amendment claims. Szajer v.  
 19 City of Los Angeles, 632 F.3d 607, 611 (9th Cir. 2011). Thus, when an allegedly  
 20 unconstitutional search or seizure uncovers evidence—such as a controlled substance or  
 21 firearm—that leads to a conviction, a § 1983 complaint about the alleged unconstitutionality of  
 22 that search or seizure cannot proceed unless the underlying conviction has already been  
 23 invalidated. See Szajer, 632 F.3d at 612 (“Their civil claims necessarily challenge the validity of  
 24

1 the undercover operation and in doing so imply that there was no probable cause to search for  
 2 weapons.”). Heck also applies to Plaintiff’s due process and equal protection claims because  
 3 those claims simply employ alternative legal theories to launch attacks on the same searches that  
 4 uncovered the evidence leading to Plaintiff’s conviction. (See Dkt. No. 1, Ex. 1 at 17–19.) A  
 5 favorable decision on either ground would undermine the validity of Plaintiff’s conviction. Thus,  
 6 all of Plaintiff’s claims are barred by Heck and are subject to Heck’s requirement that the related  
 7 convictions be invalidated through a habeas action or direct appeal before a § 1983 claim can  
 8 proceed.

9 Plaintiff’s Amended Complaint does nothing to remedy the problem because it merely  
 10 raises the same assertions under 42 U.S.C. § 1985. The Ninth Circuit has held that “the absence  
 11 of a section 1983 deprivation of rights precludes a section 1985 conspiracy claim predicated on  
 12 the same allegations.” See Caldeira v. Cnty. of Kauai, 866 F.2d 1175, 1182 (9th Cir.1989).

### 13 Conclusion

14 Because Judge Tsuchida’s Report and Recommendation correctly applied Heck v.  
 15 Humphrey to Plaintiff’s proposed complaint and Plaintiff’s Amended Complaint does not avoid  
 16 the exhaustion requirement, the Court ADOPTS the Report and Recommendation in full and  
 17 DISMISSES the case without prejudice.

18  
 19 The clerk is ordered to provide copies of this order to Plaintiff and Judge Tsuchida.

20 Dated this 7th day of April, 2014.

21  
 22  
 23 

24 Marsha J. Pechman  
 Chief United States District Judge